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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,770	07/22/2003	Joseph S. Edwards	B9EDW001.14 :12068.000102	6110
7590 04/07/2005 Merek, Blackmon & Voorhees, LLC 673 S. Washington St. Alexandria, VA 22314			EXAMINER HOEY, ALISSA L	
			ART UNIT 3765	PAPER NUMBER

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/623,770

Applicant(s)

EDWARDS ET AL.

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 1, 2 and 4-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Applicant's election without traverse of claims 3 and 9 in the reply filed on 02/25/05 is acknowledged.

#### ***Claim Objections***

2. Claims 4-9 are objected to because of the following informalities: they are dependent upon claims 1 and 2 which are withdrawn claims. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 3 is rejected under 35 U.S.C. 102(e) as being anticipated by Morales (US 2003/0014804).

In regard to claim 3, Morales teaches an article of apparel (10) capable of being used with trousers worn low on the hips (column 2, paragraph 0021). A panel of flexible material configured to encircle the waist of a person having an upper edge and a lower edge (paragraph 0028, figures 2-4). An elastic waistband (26) located near the upper edge of the panel of flexible material, disposed to constrict about the waist of a person (paragraph 0020). A drawstring (34) located along and near the lower edge of the panel

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of flexible material, disposed to constrict over a wearer's garment (figures 2-4). The garment of Morales is capable of constricting over trouser worn low on the hips preventing the trouser from hip disengagement.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morales.

In regard to claim 9, Morales teaches the panel of flexible material having a proximal end (14a), a distal end (14b) and a hook and loop fastener (38a, 38b) disposed to releasably join the proximal end to the distal end (figures 1 and 4).

However, Morales fails to teach the fastener connecting the distal and proximal end together being a slide fastener.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the fastener being a slide fastener because Applicant has not disclosed that the fastener being a slide fastener provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with fastener being a slide fastener or hook and loop fastener, because as long as the fastener connects the distal end to the proximal end

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the type of fastener is not critical. Therefore, it would have been an obvious matter of design choice to modify Morales to obtain the invention as specified in claim 9.

### ***Conclusion***

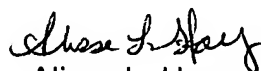
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Noble, Keller, Warren, Parris, Randolph, Goldstein, Matthews, MacRae, Brent, Geimer, Ewerwahn, Mundt, Kalso, Perez, Gallegos, Hunt, Aldridge, Hewitt, Calleja, Vesterinen, Hube, Schaefer, Head, Dzielak, Jolla, Ganz, Counts, Morrison, Rosenberg, DaBaene, Crisp, Rhoden, Jackson, Garcia, Leach, DiMaio, Bass, Guilani, Villalobos, Carney and Stangle are all cited to show closely related garment articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alissa L. Hoey  
Patent Examiner  
Technology Center 3700